

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**and**

**SAN DIEGO REGIONAL CENTER, Service Agency**

**OAH No. 2022120199**

**DECISION**

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter by videoconference on February 16, 2023.

Bridgette Webster, Attorney, represented San Diego Regional Center (SDRC).

Wendy Dumlao, Attorney, represented claimant who did not appear.

Oral and documentary evidence was received. Written closing briefs were due by February 22, 2023. The record was closed, and the matter was submitted for decision on February 22, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 28-year-old male who is eligible for regional center services based on his diagnosis of autism. He resides in his home with his mother. Claimant's mother is his conservator and his primary caretaker.

2. On November 1, 2022, SDRC issued a Notice of Proposed Action where it denied claimant's request to fund intensive Applied Behavior Analysis (ABA) services, specifically, 30 hours per week of direct services, and 16 hours per month of Board Certified Behavior Analysts (BCBA) supervision. SDRC denied claimant's request that SDRC reimburse claimant for the cost of assessments conducted by the Center for Autism and Related Disorders (CARD).

3. On December 2, 2022, claimant filed a Fair Hearing Request. In claimant's Fair Hearing Request, claimant listed seven reasons for requesting a hearing and what claimant was requesting to resolve his issues:

- Denial of ABA services.
- Request: ABA services in the amount and frequency of 30 hours per week and 16 hours per month of supervision by Board Certified Behavioral Analyst (BCBA).
- Denial of reimbursement for ABA assessment and meetings CARD had to attend with SDRC because SDRC requested that the Functional Behavioral Assessment (FBA) be revised multiple times.

- Request: Reimbursement of \$800 for CARD's Oct 31, 2018, ABA assessment, and reimbursement of fees for meetings CARD attended with SDRC for revisions by CARD at the request of SDRC.
- Delay in providing services as identified and recommended in IPP:
  - A. Claimant's mother attended multiple meetings, researched and offered multiple program ideas over the years and claimant was still put on wait lists since 2017 - except June 2018 through December 2018 when he was put into inappropriate and unsafe day programs. B. And despite multiple meetings no follow up by Consumer Service Coordinators (CSC) and no other alternatives provided.
- Request: Reimbursement for services provided by "others" that should have been funded by SDRC since 2017.
- Other services like Independent Living Services (ILS) and Tailored Day Services (TDS) cannot be safely implemented without behavior-trained staff, therefore this is why ABA was requested. In addition, it has been proven since June 2018, his needs cannot be met in a community-based program and SDRC has denied the request for ABA.
- Request: SDRC to create an emergency information plan in collaboration with CARD as SDRC recommended to claimant's mother.
- Regular respite is proven to not be safe for claimant, which is why behavior respite was requested or 2:1 regular respite with ABA supervision and SDRC denied this and cannot find a behavior-respite agency, so claimant's mother is not getting a break from his care at all.

- Request: SDRC to fund behavior respite hours or 2:1 respite with ABA supervision to support claimant's behaviors and for claimant's mother to get a break.
- Denial of speech services that are recommended and requested from SDRC.
- Request: Speech services by someone trained in autism, as recommended from a speech therapy assessment from November 2022 because there is not a generic resource available.
- Client and client's mother feel like her requests for help were ignored, her level of exhaustion was ignored, SDRC did not coordinate services as they are required by law and did not communicate in a timely manner regarding these requests.
- Request: Reimbursement for attorney fees and advocate fees for attendance at IPP meeting because a decision-maker was not present although parent requested this multiple times since September 2022 for a meeting that occurred on October 31, 2022.

## **Testimony and Documentary Evidence Presented at Hearing**

4. Numerous documents were submitted, and testimony was received on behalf of SDRC from Neil Kramer, SDRC Fair Hearing Manager; Matthew Walters, former CSC; Melissa Melgar, Coordinator of Behavioral Services; Frances Medina, Program Manager; and Robin Bello, Manager of Clinical Services; and on behalf of claimant from claimant's mother; Theresa Contreras, CARD; and Deborah Plotkin, educational consultant and advocate. The following factual findings are based thereon.

## **TESTIMONY OF NEIL KRAMER**

5. Neil Kramer is SDRC's Fair Hearing Manager. He stated that regulations prohibit SDRC from reimbursing a claimant for attorney fees or paying for an individual to attend a meeting. SDRC has vendorized service providers in emergency situations. During the COVID-19 pandemic, SDRC made Participant Directed Services and Self-Determination Services available to clients. The December 2018 Intensive Behavior Intervention plan prepared by CARD for claimant was not requested by SDRC.

## **TESTIMONY OF MELISSA MELGAR**

6. Melissa Melgar is Coordinator of Behavioral Services for SDRC. She is a BCBA. She has worked at SDRC for the past five years.

7. Ms. Melgar reviewed CARD's December 2018 Intensive Behavior Intervention plan that was prepared at the request of claimant's mother. Ms. Melgar said the report does not meet SDRC's criteria for behavioral assessments. For example, for the behavior identified as "disruption," there is no baseline frequency or severity of the behavior, which would be expected if this was a functional behavior assessment. The report contains multiple skill goals without baselines. The Lanterman Act requires that goals must be reviewed every six months; with no baselines provided, there is no basis for review. In addition, claimant is currently attending Mira Costa College. CARD's report does not reflect whether the student accessibility services of Mira Costa College have been exhausted.

8. SDRC has funded 11 behavioral consultation contracts with CARD for claimant. Claimant did not use all the hours allotted to him in any of these contracts. In three instances, an extension was requested because CARD and claimant were unable to use the approved hours within the six-month period. The actual hours used were

much lower than the 30 hours per week claimant is now requesting. Ms. Melgar does not know why CARD and claimant have not used these hours that had been approved by SDRC.

9. Ms. Melgar reviewed a December 12, 2013, Behavior Consult Progress Report prepared by CARD. Throughout multiple contracts that lasted only very minimal in hours the report showed that claimant's behaviors were reduced to "0x/month." Claimant received a total of 58.5 hours of ABA services over three years funded by SDRC. The original baseline for aggression to others was four times per week, and this was reduced to zero. Property damage was also significantly reduced. Although 58.5 hours of ABA services over three years was successful in the past, claimant is now requesting 30 hours per week. On cross-examination, Ms. Melgar stated that she was not aware that during this same three-year period, claimant was also receiving six hours per day of ABA services through his school. But she did not testify that this changed her opinions.

10. Ms. Melgar stated that intensive ABA intervention is not evidence-based for adults. An ABA intervention targets a single domain while intensive ABA intervention uses a wide array of techniques, some of which are not evidence-based for adults. Intensive ABA intervention targets all areas of the domain, including social, communicative, self-help, adaptive functioning, and safety. These intensive interventions are typically used for young children and generally require more hours of therapy. There is little research on intensive ABA interventions for adults.

Ms. Melgar testified that research studies have compared a 25-hour per week program and a 10-hour per week program and found that "there is really no difference in behavior gains." She referenced peer reviewed studies from 2020 and 2021, and an ongoing study that had not yet been published, but no details were provided.

11. Ms. Melgar has never recommended a 30-hour per week behavioral services program for a child or an adult. She believes this is excessive. The most she has recommended is 12-hours per week. The planning team does not believe these hours are indicated for claimant. SDRC initially offered 30 hours of ABA services over 6 months, or five hours per month, which is typical for an adult and is more in line with a behavioral program. Claimant did not accept the offer.

Providing 30 hours per week of services is almost a full-time job. Claimant takes college courses remotely three times per week and participates socially on Zoom or in person two times per week. He is engaged in several activities for four hours per week to develop and practice social skills, and he has five hours per week of home and community life skills practice. He receives an unknown amount of IHSS hours. SDRC has also offered respite hours. The services that claimant is currently receiving and those he is requesting, would probably total about 24 hours a day, which would be 1:1 service. SDRC is required to provide services in the least restrictive setting. Providing 1:1 service would be the most restrictive, and if it is not required, then SDRC would be putting claimant in a more restrictive setting than is required.

12. On cross-examination, Ms. Melgar was asked to review an excerpt from a National Autism Center publication<sup>1</sup> regarding evidence-based practice guidelines for autism spectrum disorder (ASD). The publication stated that the only intervention identified as established for individuals aged 22 or older is behavioral intervention, and that behavior intervention had been found to increase skills such as

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<sup>1</sup>National Autism Center. (2015). Findings and Conclusions: National Standards Project, Phase 2. Randolph, MA: Author.

communication, personal responsibility, and self-regulation, and decrease “problem behaviors.” Ms. Melgar said that there was more to this study that was not included in this excerpt, and she reiterated the difference between intensive ABA intervention and ABA intervention.

Ms. Melgar said that all the interventions that can be used for an adult can be used in SDRC’s behavior consultation model (BCM) which is supported by research. SDRC does not have a maximum number of hours allowed under their BCM.

### **TESTIMONY OF MATTHEW WALTERS**

13. Matthew Walters joined SDRC in 2015 and was the CSC for claimant from 2015 through February 2022. He worked to find a day program for claimant, and he communicated with the family but there were “roadblocks.” There were some wait lists with SDRC vendors due to COVID-19, and some were not accepting referrals, but the biggest reason was the interaction between claimant’s mother and the vendors and their staff. Some vendors’ employees felt “attacked.” More than one vendor declined to accept claimant into its program.

14. Creel Industries (Creel) offered TDS and regular day programs, and ILS. These services were each explored but after an initial intake meeting, Creel staff said it was not appropriate to take claimant on as a client. The director of Creel contacted Mr. Walter and stated that he believed claimant’s mother was very rude and a staff member “felt attacked” during the interview. This was a pattern with all vendors interviewed, with the exception of Options for All.

15. There was an opening at Options for All and claimant was accepted in its day program. He attended from August 2018 through June 2019.



16. SDRC met with representatives of San Diego Community Living Services (SDCLS) regarding TDS and ILS. By the end of the meeting, it was clear the vendor was not going to work with claimant. SDRC has no recourse if a vendor declines to accept a client. Mr. Walters was told by SDSLS representatives that they felt claimant's mother was rude.

17. Mr. Walters said they had good success getting to the intake stage with vendors, but after the vendor met with claimant's family, for whatever reason, they declined to accept claimant. Mr. Walters had discussions with claimant's mother and Deborah Plotkin, claimant's advocate, where he and Ms. Plotkin "tried to rein her (claimant's mother) in." Mr. Walters said, "Every single meeting we went to with a provider was the same way."

18. When Mr. Walters arrived at SDRC in 2015, claimant had already been authorized for respite services. He doesn't believe claimant's mother used respite services more than "an hour here and there" until 2018. SDRC authorized respite hours, but it was up to claimant to utilize those hours. Claimant previously used respite services through 2014. He then took a break until 2018. He used 3.09 hours in 2018 and 6.9 hours in 2019.

19. Claimant's IPPs dated March 13, 2019, March 12, 2020, and February 24, 2021, each stated that "[claimant] will have the support of an appropriate behavioral support agency." Mr. Walters said this was the reason for the October 2018 CARD assessment. Claimant had some incidents of aggression at his day program, and this language in his IPPs provides documentation so in the event that behavior services are needed in the future, these services would be provided if authorized. Claimant was approved for ten hours of behavioral management consultation with CARD for the

period October 1, 2018, through April 30, 2019. The request was renewed for an additional six months from May 1, 2019, through December 31, 2019.

### **TESTIMONY OF ROBIN BELLO**

20. Robin Bello has been with SDRC since 2018. She worked as a CSC and program manager, and since March 2022, she has been the Manager of Clinical Services.

21. From the time Ms. Bello became Manager of Clinical Services, she is aware that SDRC has been working to obtain services for claimant, including TDS or day programs, both in home and out-of-home, ILS, a social group over Zoom, a family and future planning course with Home of Guiding Hands (HGH), and parent-caregiver training. There are notations in the service notes throughout the months of March, April, May, June, and July 2022 of the contacts that were made. There have been emails, meetings, and telephone calls with claimant's mother and vendors in attempts to start services for the claimant. This process has not yet reached the place where a vendor is selected or where a vendor accepts the client.

Claimant's mother requested that the vendors for TDS and ILS be registered behavior technicians (RBT) or a BCBA. Because these qualifications are not required by Title 17 guidelines, many vendors do not have employees who meet these qualifications.

22. Regarding claimant's claim for speech therapy services, in May 2022 claimant's mother shared that she had gotten 12 speech therapy sessions approved through an insurance carrier. Because SDRC is a vendor of last resort, if a service is available through a client's insurance carrier, SDRC is not allowed to provide that service. Ms. Bello heard nothing further regarding speech therapy, until receipt of this

Fair Hearing Request. There is no indication that claimant has exhausted all generic resources for speech therapy and, at this time, SDRC does not have vendors to provide speech therapy to adults.

23. During a May 2022 IPP meeting, there was a discussion that claimant's mother and claimant were the only ones in the home, and that a family planning binder would be helpful. SDRC suggested a service through HGH called "family future planning." Ms. Bello said that this service has not been utilized "to my knowledge."

24. Claimant's IPP dated May 11, 2022, states as Outcome No. 1, that claimant "will receive behavior respite care services . . . through February 11, 2023." At this time, SDRC has one behavior respite vendor, and that vendor has stopped taking referrals. SDRC offered parent caregiver training (30 hours over a 6-month period) which included training regarding ILS and TDS.

25. In a January 30, 2023, email, Frances Medina, Program Manager, sent claimant's mother the names of three respite service vendors. These vendors provided participant-directed services. On February 6, 2023, Ms. Medina sent a follow-up to see if claimant's mother needed assistance in selecting a respite provider. To date, claimant's mother has not responded.

26. During COVID, participant direct services could be utilized to provide flexibility to consumers. CSCs were required to provide this information to consumers.

### **TESTIMONY OF FRANCES MEDINA**

27. Frances Medina has been an SDRC Program Manager for adults living in the home since August 2022.

28. Notes from claimant's file reflected that on August 29, 2022, Ms. Medina discussed client outcomes with CSC Yolanda Morris. Ms. Morris had been instructed to review outcomes and remove ABA/BCBA/RBT language from the draft, but Ms. Morris did not recall if this issue had been discussed with claimant's mother. At hearing, Ms. Medina confirmed that this language had been removed from the draft. She agreed that all members of the planning team should be consulted before any language is removed.

29. Ms. Medina said that "behavioral support agency" is a generic reference to consulting with another service provider, rather than a reference to a specific agency. She explained that a behavioral consult occurs when a client is exhibiting certain behaviors, and a behavioral specialist is asked to go into the client's setting, such as a day program, and observe the client in that setting. If the behavioral specialist observes certain behaviors that need to be addressed, this would be reported to the planning team, who will assist the program provider in managing those behaviors.

### **TESTIMONY OF THERESA CONTRERAS**

30. Theresa Contreras testified in support of claimant. She is a Licensed Marriage and Family Therapist (LMFT). She has been with CARD for 26 years and is Director of the Supervisor Training Department. She provides initial and ongoing training for BCBAs at CARD. CARD is a vendor of regional center. CARD services start with an assessment. She has known claimant since he was in elementary school. CARD provided services for claimant until he was about 16 years old.

31. CARD prepared a behavior support plan in December 2018 and an initial report in April 2022. Ms. Contreras was involved in the meetings, but she did not

prepare the report. In October 2018, CARD was contacted by claimant's mother to develop a plan to reassess claimant's current levels. In conducting an assessment, CARD speaks with the individual's parents and observes the individual in three different environments to see the levels of independence and prompting. Regarding independence, claimant needed support from his mother "across environments." Ms. Contreras explained that when CARD did the assessment, it was not doing a behavioral analysis. Baselines are not shown in claimant's assessment "because we had not gotten that far, but we saw the behaviors." Claimant's mother paid for this assessment. Prior to this, CARD had been authorized by SDRC to provide services, but not when this one was performed. Claimant's mother said she would be responsible for the costs.

32. Ms. Contreras's biggest concern for claimant was that he was very "prompt" dependent. Claimant has skills and abilities to become more independent but to do that he needs specific support from someone trained at the level of an RBT to support him and fade away from those prompts. CARD would have to do very systematic teaching and training to be able him to handle these situations on his own. CARD employs some RBTs, but not all vendors require this registration. Ms. Contreras is not recommending that all behavioral therapists be RBTs, but they have to go through specific training to reflect their knowledge of ABA, and then undergo specific training in claimant's behavior support plan.

33. CARD is recommending a total of 30 hours of ABA per week plus 16 hours per month of supervision. The 30 hours per week of ABA would be allocated as follows: facilitation during his online education to remain focused and engaged (6 hours); adult supervision to complete homework related to these courses (5 hours); develop learning new skills (10 hours); home and community life skills practice (5

hours); and develop and practice social skills (4 hours). CARD believes that 30 hours are needed to start the process.

Ms. Contreras stated that "at first" hours would need to be conducted with CARD's ABA trained staff. Once the program has begun and CARD begins to see progress and more independence, she anticipates that he would only need above 10 hours per week to work on goals, but this is conditioned on caregivers being trained. She acknowledged that other vendors may not want CARD to train their staff.

Ms. Contreras stated that there is research that supports ABA of up to 25 hours per week for adults. She did not provide references for this research. When determining hours of service, three things are included, not just research, but individual's needs and where they fall on the autism spectrum. Ms. Contreras acknowledges "that the 30 hours is high for (claimant)," but she added that she does not see that the 30 hours has to continue on an ongoing basis. To get him to the levels of independence according to the plan, CARD feels that all of his time and the support that needs to be given to him, needs to initially be with the higher trained people and then look for a successful transition.

34. CARD would include respite services with a provider with training and supervision specific to claimant's behavior support plan.

Ms. Contreras stated that the goals are appropriate for claimant and are required for him to make progress toward his independence.

### **TESTIMONY OF DEBORAH PLOTKIN**

35. Deborah Plotkin testified in support of claimant. She is an education consultant and advocate. As an advocate, she recommends appropriate services and

helps individuals access services. Her specialty is ASD. She has been in the field for 26 years. Ms. Plotkin has been claimant's education consultant since he was in third grade. She has worked with claimant and his mother for about 20 years.

36. Ms. Plotkin and Mr. Walters communicated regularly. Ms. Plotkin has never felt that claimant's mother was rude, rather, she described claimant's mother as "very specific and direct as to what claimant needs and what she wants for him." She is his advocate. Mr. Walters never told her that claimant's mother's behavior interfered with obtaining services for claimant. She and claimant's mother were often told that claimant was "on a wait list."

37. After claimant aged out of special education in December 2017, Ms. Plotkin and claimant's mother met with Mr. Walters. In April 2018, they met with Creel. Ms. Plotkin and claimant's mother were surprised that Creel would not accept claimant.

SDRC staff, claimant's mother, and Ms. Plotkin had meetings over several months and in August 2018, claimant started a day program at Options for All. On September 13, 2018, claimant became upset with staff and on September 18, 2018, he struck a staff member and a consumer. The CARD FBA was completed in December 2018. She and claimant's mother met with Mr. Walters, and he recommended 25 hours of ABA per week. This was never funded by SDRC. In June 2019, claimant's mother pulled claimant from Options for All.

38. In August 2019, SDRC looked into a day program with Partners with Industry (PWI). They had a meeting in August or October 2019, and there were issues with specific transportation as claimant needed help on a bus. In December 2019,

claimant started with PWI. In January 2020, claimant's mother went to pick him up and he was not there. She pulled him from the program.

39. Claimant's March 12, 2020, IPP Outcome #6 stated: "Through 2/28/21, (claimant) will have the support of an appropriate behavioral support agency to assist with developing goals for services, and to provide resources to help (claimant) progress in all settings." Ms. Plotkin participated in all of claimant's IPPs. She stated that the intention of this "outcome" was that there would be a behavioral therapist available for claimant, probably CARD. She said there was never an understanding that this meant "if" it was determined that this is what claimant needed. Claimant's mother agreed and signed this IPP on September 7, 2020.

40. In March 2020, the COVID-19 pandemic began. No one explained participant directed services to claimant's mother. From March 2020 through January 2021, SDRC did not provide services. In January 2021, claimant began attending Mira Costa College. He needed 1:1 support through Zoom. He was not able to receive this, but he was given training and accommodations. Claimant's mother "gives the 1:1."

41. In March 2021, SDRC tried to obtain services through San Diego Community Living Services (SDCLS), both independent living services and tailored day services. SDRC stated that claimant had been put on a wait list until June 2021. She and claimant's mother heard nothing further. In August 2021, Ms. Plotkin, claimant's mother, and Mr. Walters contacted SDCLS, at which time they were told that SDCLS had previously notified Mr. Walters that they could not provide services for claimant.

42. In September 2021, SDRC participated in trying to obtain services from Toward Maximum Independence (TMI). The meeting went well and TMI said they could not work with claimant until January 2022. Nothing came of this.



43. In a phone conversation with Mr. Walters, Ms. Plotkin and claimant's mother asked Mr. Walters for behavior respite because claimant needed someone who knew how to deal with him. Mr. Walters agreed but the services were not provided.

44. Regarding claimant's request for RBT or ABCA qualifications, Ms. Plotkin acknowledged that there are many in the field with training but without this certification. Ms. Plotkin said it does not matter if they are registered but it is more important that they are trained and supervised by CARD.

45. Ms. Plotkin said that Mr. Walters statements that claimant's goals were "in progress" and "met" were inaccurate. In claimant's March 12, 2020, IPP, regarding Outcome #6 and "behavioral support" for claimant, Mr. Walter's stated that these goals had been "met" because claimant "receives therapy and behavior services through his insurance, and they work with him to address his behavioral and emotional needs." Ms. Plotkin stated that the self-determination program was offered to claimant on May 11, 2022. She said Mr. Walters "steered us away" from self-determination and told us to obtain the services first.

### **TESTIMONY OF CLAIMANT'S MOTHER**

46. Claimant's mother testified in support of claimant. She said there were "many incidents" that occurred while claimant was attending Options for All in 2018. She said, "He was having aggression, not just being non-compliant." Because of these incidents, she asked CARD to provide an assessment of claimant's behavior. CARD has a history of strategies and methods of which she is familiar with. She requested behavioral respite for claimant because this was the only care that claimant had, starting at age four.

47. At this time, claimant is getting no respite services because she believes he needs behavioral respite. She has not responded to SDRC's recent emails regarding respite services because she has been busy, and it was only two weeks before the hearing. SDRC was offering generalized respite only. She has been requesting behavioral respite since 2018. A regular respite provider must understand and know how to handle claimant to make sure he is safe.

48. During COVID-19, no one from SDRC told her or explained about participant directed services (PDS) or self-directed services (SDS). However, she then said that Mr. Walters told her that SDS "may not be the best way for our needs." She was interested in "regular services." She told Mr. Walters at several IPP meetings that she was exhausted. She sent him an email where she said she was doing online therapy dealing with exhaustion. She became officially divorced in October 2020. She said, "I needed support."

49. SDRC went with her to a hearing for In-Home Supportive Services (IHSS). She was told that claimant qualified for the "maximum" amount of services. No other information regarding IHSS was offered at hearing.

50. Claimant has a busy schedule. He is enrolled in continuing education at Mira Costa College and takes functional math and language two days a week. He is "in the community" three days a week. He is at the recreation center two evenings a week. She helps him to thoroughly hear and understand questions, and she helps him with forming his responses.

51. She is not currently vendored to provide services. If SDRC provided paperwork for her to become vendored, and reimbursed her for her service, she would do it.

52. She said, “[Claimant] taught me to be direct. I don’t believe I was difficult.” She said it is sad that claimant did not get these services based on this perception. As claimant’s conservator, she has people who hold her accountable. She said because of this, “I did what I had to do.”

## **LEGAL CONCLUSIONS**

### **Purpose of the Lanterman Act**

1. The purpose of the Lanterman Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

### **Burden and Standard of Proof**

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.)

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **The Lanterman Act and Regional Centers**

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

7. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

8. SDRC is one of 21 California regional centers. SDRC provides advocacy for and assistance to a large developmentally disabled population living in San Diego County and Imperial County. To qualify for SDRC services, a person must live within one of these counties and be diagnosed with a developmental disability as defined by Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000.

## **Applicable Statutes**

9. Welfare and Institutions Code section 4502, subdivision (a) provides that one of the Lanterman Act's main objectives is to prevent or minimize institutionalizing consumers and prevent their dislocation from their families and communities. (See Welf. & Inst. Code, § 4741.) Subdivision (b)(1) provides:

(b) It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(1) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

10. Welfare and Institutions Code section 4512, subdivision (b) states:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be

made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, daycare, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of the individual's family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, childcare, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, telehealth services and

supports, as described in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. This subdivision does not expand or authorize a new or different service or support for any consumer unless that service or support is contained in the consumer's individual program plan.

11. Welfare and Institutions Code section 4648, states in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

[¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

12. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental entities and prohibits them from purchasing services available from generic resources, including other governmental entities, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

13. Welfare and Institutions Code section 4685 provides, in part:



[¶] . . . [¶]

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

14. Welfare and Institutions Code section 4686.2, subdivision (b), provides that regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

[¶] . . . [¶]

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

[¶] . . . [¶]

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

15. Welfare and Institutions Code section 4741 provides:

An adult person with a developmental disability has the legal right to determine where his or her residence will be. Except in a situation which presents immediate danger to the health and well-being of the individual, the regional center or its designee shall not remove a consumer from a residential care facility against the client's wishes unless there has been specific court action to abridge such right with respect to an adult or unless the parent, guardian or conservator consents with respect to a child.

## **Regulatory Authority**

16. California Code of Regulations, title 17, section 50612, provides in part:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows: (1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate.

(c) The authorization for the purchase of service shall be in the following form: (1) The authorization shall be in writing, except as follows: (A) A verbal authorization by the regional center director or his authorized agency representative shall be allowed to provide emergency services utilizing the following procedures: 1. An immediate notation is made in the case record showing the date and nature of such

authorization; and 2. The verbal authorization is confirmed with a written authorization from the regional center as soon as possible, but no later than the regional center's next cyclical production of purchase of service authorization documents.

17. California Code of Regulations, title 17, section 54326, states, in part:

(a) All vendors shall:

[¶] . . . [¶]

(8) Be vendored separately for each type of service provided, as specified in Sections 54342 through 54356 of these regulations unless the regional center waives separate vendorization pursuant to Section 54342(a)(37) or 54342(a)(78)(A).

[¶] . . . [¶]

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center. When the vendor is receiving payment for a consumer from the Department of Rehabilitation and/or the Department of Health Services for a portion of the program day, and the vendor's rate of reimbursement is based on costs reported pursuant to Section 57422(c)(2), the vendor shall only bill the prorate share of the daily rate.

[¶] . . . [¶]

(d) Regional centers shall not:

[11] . . . [11]

(4) Except as specified in Section 54324 of these regulations:

[11] . . . [11]

(B) Reimburse a vendor for services provided before vendorization.

## **Evaluation**

18. Complaint No. 1. Denial of ABA services.

Request. ABA services in the amount and frequency of 30 hours per week and 16 hours per month of BCBA.

Evaluation. SDRC's position regarding intensive ABA intervention services for adults was more persuasive and reliable than claimant's position to the contrary. Moreover, in the past, claimant has not utilized all the behavior consultation hours funded by SDRC, and yet he showed significant improvements with the hours he did use, which was much less than what he is now requesting. Claimant did not establish that SDRC should fund 30 hours per week of ABA services or 16 hours per month of BCBA, and those requests are denied.

However, claimant did demonstrate that ABA services are warranted at this time, just not at the level he is requesting. In the past, although SDRC agreed to fund more hours, claimant only used 58.5 hours of ABA services over three years. This averages to 20 hours per year, and his behaviors improved. Although CARD is

recommending an amount much greater, for the reasons SDRC provided, that amount is not reasonable nor supported by claimant's history. On this record, ordering SDRC to fund 30 hours of ABA services over six months, not intensive ABA intervention services, will meet claimant's needs. SDRC shall also be ordered to re-evaluate these services every six months and may increase the ABA hours upon a showing of need.

19. Complaint No. 2. Denial of reimbursement for ABA assessment and meetings CARD had to attend with SDRC because SDRC requested that the FBA be revised multiple times.

Request. Reimbursement of \$800 for CARD's Oct 31, 2018, ABA assessment, and reimbursement of fees for meetings CARD attended with SDRC for revisions by CARD at the request of SDRC.

Evaluation. SDRC may only reimburse a vendor who provides a specific authorized service. Claimant requested that CARD provide an assessment for claimant; SDRC never made or authorized the request. Claimant wanted the assessment due to concerns regarding claimant's behavior while at Options for All. Claimant agreed to pay for the October 2018 assessment and did so. As SDRC did not authorize this assessment, it is prohibited from reimbursing claimant. Claimant's request for reimbursement is denied.

20. Complaint No. 3. Delay in providing services as identified and recommended in IPP: Claimant's mother attended multiple meetings, researched and offered multiple program ideas over the years and claimant was put on wait lists since 2017, except from June 2018 through December 2018 when claimant was in an inappropriate and unsafe day program because service coordinators did not follow up or provide other alternatives.

Request. Reimbursement for services that should have been funded by SDRC.

Evaluation. As to claimant's complaint regarding a delay in providing services, the evidence showed that there were "roadblocks," including wait lists and vendors not accepting referrals, and finding services satisfactory to claimant and claimant's mother, and the evidence showed that SDRC continued to attempt to obtain various services for claimant.

Claimant also failed to identify the providers or the services provided that SDRC was required to fund. For those services provided by claimant's mother, she is not vendorized at this time so SDRC may not reimburse her. Accordingly, claimant's request for reimbursement is denied.

21. Complaint No. 4. Other services like ILS and TDSO cannot be safely implemented without behavior trained staff, therefore this is why ABA was requested. In addition, it has been proven since June 2018 (claimant's) needs cannot be met in a community-based program and SDRC has denied the request for ABA.

Request. SDRC create an emergency information plan in collaboration with CARD as SDRC recommended to claimant's mother.

Evaluation. Claimant's request for ABA services is addressed above regarding complaint No. 1. SDRC will facilitate the creation of an emergency information plan for claimant in collaboration with CARD.

22. Complaint No. 5. Regular respite has been proven to not be safe for (claimant) which is why a behavior respite was requested or 2:1 regular respite with ABA supervision. SDRC denied this and cannot find a behavior respite agency.

Request. SDRC fund behavior respite hours or 2:1 respite with ABA supervision to support (claimant's) behaviors and for (claimant's mother) to get a break.

Evaluation. SDRC has not be able to find a vendor who is able to provide behavior respite service. Ms. Contreras stated that CARD would provide respite services with a provider with training and supervision specific to claimant's behavior support plan. On January 30, 2023, SDRC provided claimant's mother the names of three respite service vendors. These agencies provided participant directed services. SDRC followed up with a second email but as of the hearing, claimant's mother has not responded or stated whether she has contacted any of these vendors.

SDRC will continue to search for a vendor who is able to provide behavior respite services and claimant's mother must contact the vendors named by SDRC to determine if they are able to provide behavior respite. If behavior respite services cannot be obtained within the next three months, SDRC must fund 2:1 regular respite with ABA supervision until a behavior respite vendor can be located.

23. Complaint No. 6: Denial of speech services that are recommended and requested from SDRC.

Request. Speech services by someone trained in Autism, as recommended from a speech therapy assessment from 11/2022, because there is not a generic resource available.

Evaluation. Claimant informed SDRC in May 2022 that his insurer approved 12 speech therapy sessions. SDRC received no further information regarding speech therapy until receipt of the Fair Hearing Request. No further evidence about speech therapy was offered at hearing. Because SDRC is required to exhaust generic resources, it may not fund that service. There is no evidence that claimant has



exhausted all generic resources for speech therapy. SDRC has not denied a request for speech therapy, however, at this time SDRC has no vendor who is able to provide speech therapy for adults. Based on this record, claimant's request is denied.

24. Complaint No. 7. Client and client's mother feel like her requests for help were ignored, her level of exhaustion was ignored, SDRC did not coordinate services as they are required by law and did not communicate in a timely manner re: these requests.

Request. Reimbursement of claimant's attorney fees and advocate fees for attendance at IPP meeting on October 31, 2022, because a decision-maker was not present although parent requested this multiple times prior to the meeting.

Evaluation. SDRC has attempted to coordinate services for claimant, but SDRC TDS and/or day program vendors declined to provide services to claimant. SDRC has no recourse when a vendor so declines.

There is no provision in the Lanterman Act authorizing SDRC to reimburse claimant for his attorney fees or for non-vendored advocate fees, and that request is denied.

## **ORDER**

1. Claimant's request is granted in part and denied in part. SDRC shall fund 30 hours of ABA services, not intensive ABA intervention services, over six months. SDRC shall re-evaluate these services every six months and may increase the ABA hours upon a showing of need.

2. Claimant's request is denied. Title 17 prohibits SDRC from reimbursing for services which were not authorized by SDRC. SDRC did not request these services. CARD's services were requested by claimant's mother, and she is responsible for payment.

3. Claimant has failed to identify which services were provided by "others" and who provided these services.

4. SDRC will facilitate the creation of an emergency information plan for claimant in collaboration with CARD.

5. SDRC will continue to search for a vendor who is able to provide behavior respite services and claimant's mother must contact the vendors named by SDRC to determine if they are able to provide behavior respite. If behavior respite services cannot be obtained within the next three months, SDRC must fund 2:1 regular respite with ABA supervision until a behavior respite vendor can be located.

6. Claimant's request is denied. Claimant has not made a request to SDRC. If claimant makes such a request, SDRC shall evaluate the request and if approved, SDRC must continue to search for a vendor to provide speech therapy to adults or work with claimant to find an alternative.

7. Claimant's request is denied. SDRC is prohibited from reimbursing claimant for attorney fees and advocate fees.

DATE: March 13, 2023

MARION J. VOMHOF  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**vs.**

**SAN DIEGO REGIONAL CENTER, Service Agency.**

**OAH No. 2022120199**

**ORDER ON APPLICATION FOR RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in this matter on March 14, 2023. On April 14, 2023, claimant filed with OAH a motion for the ALJ to clarify her decision. At issue, is a disagreement by the parties regarding whether the decision requires San Diego Regional Center (SDRC) to fund certain behavior supervision hours in addition to 2:1 respite hours. SDRC provided a written response indicating its position regarding the disagreement.

There is no statutory provision authorizing a hearing officer to clarify a final decision where the parties are in disagreement about the implementation of an order within that decision. However, under Welfare and Institutions Code section 4713, a party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section

4712, subdivision (g). Thus, claimant's motion will be deemed an application for reconsideration of the decision.

Welfare and Institutions Code section 4713, subdivision (b), requires an application for reconsideration to be made within 15 days of the final decision date. The decision in this matter was issued on March 14, 2023, and the deemed request for reconsideration was received by OAH on April 14, 2023. Accordingly, the application for reconsideration is untimely and is DENIED.

DATE: April 27, 2023

ADAM L. BERG

Presiding Administrative Law Judge

Office of Administrative Hearings